

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020224

ORDER DENYING STUDENT’S
MOTION FOR STAY PUT AND
GRANTING ELK GROVE UNIFIED
SCHOOL DISTRICT’S MOTION TO
DISMISS, AND ORDER DISMISSING
CASE

On February 7, 2013, Student filed a Request for Due Process Hearing (complaint), naming Elk Grove Unified School District (EGUSD) and Berkeley Unified School District (BUSD). Together with Student’s complaint, Student filed a motion for stay put against “either” EGUSD or BUSD. On February 19, 2013, the Office of Administrative Hearings (OAH) denied Student Motion for Stay Put as against BUSD without prejudice, and granted BUSD’s motion asking that it be dismissed in a separate ruling.¹

Student is currently placed at Milhous Children’s Services (Milhous), a licensed children’s institution (LCI) located within EGUSD’s special education local plan area (SELPA) boundaries. In its motion to dismiss, BUSD contended that it is not legally required to provide Student with a free appropriate public education (FAPE) as Student has been placed out of its geographical boundaries in a an LCI. (Ed. Code §§ 56155, and 56156, subd. 4(a).)

On March 21, 2013, Student filed an amended Motion for Stay Put against EGUSD. On April 5, 2013, EGUSD filed its opposition to Student’s amended Motion for Stay Put (opposition). In addition, on April 8, 2013, EGUSD filed a motion to dismiss on the ground that, among others, it is “not the proper party” to the complaint and thus it is not the local educational agency responsible for providing a FAPE to Student. EGUSD’s opposition and motion to dismiss were supported by sworn declarations by EGUSD’s counsel and staff. Student’s motion for stay put against EGUSD, and EGUSD’s motion to dismiss are considered below.

¹ At that time, OAH did not rule on Student’s motion for stay put against EGUSD.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §56028.5.)

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006) Ed. Code, § 56505 subd. (d).) This is referred to as “Stay Put.” For purposes of Stay Put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When individuals with exceptional needs are placed in an LCI by a public agency that is not an educational agency, the “[SELPA] shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children’s institutions . . . located in the geographical area covered by the local plan.” (Ed. Code §§ 56155, 56156.4(a).) An LCI is a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. “Licensed children’s institution” includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations. (Ed. Code § 56155.5.)

“Group home” means any facility of any capacity which provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. (Cal. Code Regs., tit. 22, § 8001(g).)

DISCUSSION

Student is 14 years old and is eligible for special education. She was adopted and is eligible for the Adoption Assistance Program (AAP). Student’s Mother (Mother) resides outside the geographical boundaries of EGUSD, but Student is currently placed at Milhous located within the SELPA boundaries. Alameda County Social Services Agency (Alameda Social Services), Adoption Assistance Program (Alameda Adoption) and Mother agreed to her placement at Milhous. Therefore, Mother contends that because Student is placed “by a public agency other than an educational agency” (i.e., Alameda Adoption and Alameda Social Services) as anticipated under Education Code sections 56155 and 56156.4, subdivision (a), the SELPA is legally required to provide Student with a FAPE. Thus, Student seeks an order for Stay Put against EGUSD.

In the OAH’s February 19, 2013’s order dismissing BUSD, OAH accepted Mother’s underlying contention regarding the nature of the relationship between a special education student who is placed in a LCI by a public agency other than an educational agency and the SELPA covering the geographical areas where the student is placed. In the order, OAH noted that “where individuals with exceptional needs are placed in a licensed children’s institution (LCI) by a public agency, other than an educational agency, the “special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children’s institutions ... located in the geographical area covered by the local plan”.

Despite the above guidance by OAH that the SELPA may be responsible for providing a FAPE, and Student’s own contention that SELPA is responsible for providing Student with a FAPE, Student did not file a request to amend her complaint or otherwise seek any leave to join the SELPA as a party to this pending case. Therefore, the SELPA is not a party to this dispute, and while EGUSD is a single-district SELPA, no one has argued, and the record has failed to show, that EGUSD is the same as the SEPLA.

Accordingly, because the SEPLA is not a party to this claim, OAH does not have jurisdiction over the SELPA, and OAH cannot make any finding or determination regarding the SEPLA’s legal duties or responsibilities under IDEA, or Education Code sections 56155 and 56156.4, subdivision (a), as requested in this pending dispute. To proceed in this manner against the SELPA would violate the SELPA’s due process rights under the law.

EGUSD’s Motion to Dismiss

Student’s complaint and motion for stay put named EGUSD as the party to the complaint. None of Student’s claims or contentions in the complaint shows why or how

EGUSD could be responsible for providing Student with a FAPE during her placement at Milhous. In fact, Student's entire case against EGUSD appears to be premised upon Education Code sections 56155 and 56156.4, subdivision (a). Therefore, EGUSD is correct that it is not be the proper party to this pending dispute, and as such, EGUSD must be dismissed. Finally, because no part of Student case survives in its current form against any current party to the dispute, Student's complaint is also dismissed.²

Motion for Stay Put against EGUSD

As discussed above, because EGUSD is not the proper party to this action, Student's motion for stay put against EGUSD must also be denied.

ORDER

1. EGUSD motion to dismiss is granted.
2. Student's motion for stay put against EGUSD is denied.
3. Student's complaint is dismissed without prejudice.

IT IS SO ORDERED.

Dated: May 17, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

² Student may re-file her case as appropriate, against any and all parties or entities that Student believes is responsible for her education during her placement at Milhous.